IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

MFA.No. 227 of 1997()

OPMV.1806/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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APPELLANT - 2ND RESPONDENT:

NATIONAL INSURNACE COMPANY LTD., REPRESENTED BY ITS ASSISTANT MANAGER, REGIONAL OFFICE, KOCHI.

BY ADV. SRI.RAJAN P.KALLYATH

RESPONDENT - PETITIONER:

P.A. .ABDULLAKUTTY, S/O. LATE ISMAIL, VALIYAKATH HOUSE, P.O. VADANAPILLY, CHAVAKKAD TALUK.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 7.6.3007, THE COURT ON THE SAME DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 227 OF 1997

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Dated this the 7th day of June, 2007

J U D G M E N T

Insurer is the appellant in this appeal. Appeal is filed against the judgment rendered by the Motor Accidents Claims Tribunal, Thrissur in O.P(MV) No.1806 of 1991 by which the Tribunal found that the first respondent, petitioner in the O.P., is entitled to get a sum of Rs.50,000/- as compensation under Section 140(2) of the Motor Vehicles Act.

2. One Smt. Amina met with a road traffic accident at about 4.00 p.m. on 11.11.1991 and sustained injuries. She died due to the injuries sustained. She was aged 73 years at the time of the accident. Her son, who was aged 50 years, filed the O.P. claiming a sum of Rs.86,000/- as compensation. The owner-cum-driver did not appear and contest the matter. The appellant alone contested the case. Negligence alleged on the part of the driver was denied. The quantum of compensation was also disputed. When the case came up for final hearing, learned counsel appearing for the petitioner

submitted that he will be satisfied if a final award in tune with the provisions contained in Section 140(2) of the Act is passed. Tribunal, accepting that contention, passed an award for Rs.50,000/- on the ground that even though the accident occurred prior to 14.11.1994, prior to amendment of Section 140 of the Act, the petitioner is entitled to get enhanced compensation as per the amended provisions of the Act. In support of the said finding, Tribunal relied on the decision reported in **New India Ass. Co. Ltd. v. Unnimayamma & Ors.** (1995(1) KLJ 148). Challenging that award, this appeal is filed.

3. Learned counsel appearing for the appellant pointed out that the principles laid down in **Unnimayamma's case** was subsequently overruled by a Full Bench of this Court in **Oriental Ins. Co. Ltd. v. Sheela Ratnam** (1996(2) KLT 695 (FB). The Full Bench held that in respect of the accident occurred prior to 14.11.1994 even if the case is decided after that date claimant can be awarded only the compensation due as per the unamended provisions of the Act. So the petitioner

is entitled to get Rs.25,000/- as compensation and not Rs.50,000/-. The award passed by the Tribunal has to be modified to that extent.

4. In the result, appeal is allowed in part. The compensation awarded by the Tribunal is modified and reduced to Rs.25,000/-. Excess amount, if any, deposited by the appellant can be withdrawn by it.

Civil Miscellaneous Petition No.796 of 1997 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 227 OF 1997

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J U D G M E N T

7TH JUNE, 2007